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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/328,890	06/09/1999	HIROYUKI TAKEUCHI	086142/0253	7427

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FOLEY & LARDNER
3000 K STREET N W SUITE 500
WASHINGTON, DC 200075109

EXAMINER

WORRELL JR, LARRY D

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 03/11/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/328,890

Applicant(s)

TAKEUCHI, HIROYUKI *Q1*

Examiner

Danny Worrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-23 is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al(5385367) in view of Forest et al.

Tanaka et al. (5385367) in the embodiment of figure 12 teaches the invention as claimed including a warp knitted fabric with a knitting yarn and an additional yarn (13) inserted into the knitting yarn. Although the yarns are disclosed in the figures as being the same thickness, they are not stated to be 3000 denier or below. Forest et al. teaches that yarns of 3000 denier or below are used in air bag covers. It would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to provide the yarns of Tanaka et al(5385367) as 3000 denier or below in order to provide the characteristics associated with such sized yarns for air bag fabrics as shown by Forest et al. such as the optimal well founded yarn characteristics of strength, hand, flexibility etc. Concerning the "double yarn" it would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to provide the yarn of Tanaka et al(5385367) as a plied yarn since the examiner takes Official Notice that plying yarns is a well known for determining and achieving specific yarns sizes. Moreover note the plied yarns used in the airbag cover of Forest et al. Concerning the strength of 8.0g/d and the .08g/d, it would have been obvious at the time the

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invention was made to one of ordinary skill in the art to which the invention pertains to provide the specific strength characteristics in order to provide the optimal strength for a specific end use since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The preamble recitation of intended use, i.e. "as an air belt for enclosing a bag belt folded into the shape of a band and constituting an inflatable air belt" is considered non-controlling as to the metes and bounds of the claim since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Even so note that Tanaka et al(5385367) is in fact an air belt.

Allowable Subject Matter

Claims 5-23 are allowed.


Response to Arguments

In response to applicant's argument that Forest et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, it is self-evident that Forest et al and Tanaka et al are within the same field of endeavor, namely air bag covers. In response to applicant's argument that there is no suggestion to combine the references, the examiner

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recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Each of the elements set forth in claim 1 finds an equivalent in Tanaka et al(5385367) except the specific yarn size of "3000 denier or below". As a practical matter the extensive range of 3000 denier or below almost certainly encompasses the yarns shown in Tanaka et al(5385367). Even so the examiner included the reference of Forest et al. to show that such sizes are typically used in the airbag covers. This modification clearly only involves a change in the size of a yarn. The benefits of yarn sizes such as those shown by Forest et al are most definitely exhibited in the optimization of well founded characteristics such strength, hand, flexibility, etc. This is especially true given the breadth of applicant's claimed range.

LDW



Danny Worrell
Primary Examiner
TC 3700